APPEAL NO. 022217
FILED OCTOBER 16, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on August 8, 2002. The hearing officer determined that the appellant (carrier herein) did not waive its right to contest the respondent's (claimant herein) entitlement to supplemental income benefits (SIBs) for the 12th quarter; and that the claimant was entitled to SIBs for the 12th quarter, from May 17 through August 15, 2002. The carrier appeals the hearing officer's determination that the claimant was entitled to SIBs for the 12th quarter, arguing that the evidence does not support the factual findings that the claimant was unable to work during the filing period for the 12th quarter; that a narrative report from Dr. T specifically explains how the claimant's injury caused this total inability to work; and that there is no other record which shows that the claimant is able to work. The claimant responds that the decision of the hearing officer was supported by the evidence and that the same arguments have been made by the carrier and rejected in two previous quarters.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) set out the statutory and administrative rule requirements for SIBs. At issue in this case is whether the claimant met the good faith job search requirement of Section 408.142(a)(4) through a total inability to work as set out in Rule 130.102(d)(4). The parties stipulated that the qualifying period at issue was from February 2 through May 3, 2002. Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that during the qualifying period of the 12th quarter the claimant had no ability to work, that the there was a narrative report from Dr. T which specifically explains how the injury causes a total inability of the claimant to work, and that there is no other record which shows that the claimant is able to work. The carrier contends that these findings are contrary to the evidence.

Section 410.165(a) provides that the contested case hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence.

Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In his decision the hearing officer gives a detailed explanation as to why he found that Dr. T's narrative showed that the claimant had a total inability to work and why he did not believe that the peer review report by Dr. P showed that the claimant had an ability to work. Applying the standard of review above, we do not find either the factual findings or the decision of the hearing officer to be contrary to the overwhelming evidence.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LUMBERMENS MUTUAL CASUALTY COMPANY** and the name and address of its registered agent for service of process is

CORPORATION SERVICE COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Susan M. Kelley
Appeals Judge

_____
Michael B. McShane
Appeals Judge